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3 BILL NO. S-78-06-22

4 SPECIAL ORDINANCE NO. S-104-78
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AN ORDINANCE approving an Agreement with
Kenneth Niemeyer, Real Estate & Develop-
ment, Inc., for construction of a sani-
tary sewer.

8 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF
9 FORT WAYNE, INDIANA:

10 SECTION 1. That the Agreement dated May 31, 1978, between the
11 City of Fort Wayne, by and through its Mayor and the Board of Public Works
12 and Kenneth Niemeyer, Real Estate & Development, Inc., for:

13 SANITARY MAIN #1:

14 Beginning at an existing sanitary sewer man-
15 hole located 370+ LF east of and 43+ LF south
16 of the intersection of Autumn View Drive and
17 Tillman Road; thence southeasterly 295+ LF to
18 a proposed manhole; thence easterly 670+ LF
19 to a proposed manhole; thence southeasterly
20 300+ LF to a proposed manhole located 20+ LF
21 east of and 20+ LF south of the centerline
22 intersection of Thrush Avenue and Linden Drive;
23 thence southerly generally following the east
right-of-way of said Thrush Drive 620+ LF to
a proposed manhole located 5+ LF south of and
1+ LF east of the southwest corner of Branning
Hills Addition, Section I; thence generally
following the south right-of-way line of
Turnwood Drive 320+ LF terminating at a pro-
posed bulkhead located 5+ LF north of and 1+
LF east of the Northwest corner of lot #41 of
said Branning Hills Addition, Section I.

24 LATERAL #1:

25 Beginning at a proposed manhole located 20+ LF
26 south of and 20+ LF east of the centerline in-
27 tersection of Thrush Drive and Linden Drive;
28 thence easterly generally following the south
right-of-way line of said Linden Drive 700+ LF
29 to a proposed manhole located 20+ LF south of
30 and 20+ LF west of the centerline intersection
31 of Linden Drive and Melwood Court; thence nor-
32 therly generally following the west right-of-
way line of said Melwood Court 330+ LF to a
33 proposed manhole; thence westerly generally
34 following the south right-of-way of Leswood
35 Court 450+ LF terminating at a proposed clean-
out located 4+ LF north of and 2+ LF east of
the southeast corner of lot #13 of Branning
Hills Addition, Section I.

LATERAL #1-A:

Beginning at a proposed manhole located 20+ LF
south of and 20+ LF west of the centerline

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3 intersection of Linden Drive and Evanwood
4 Court; thence southerly generally following
5 the west right-of-way of said Evanwood Court
6 660+ LF terminating at a proposed manhole
located 5+ LF east of and 1+ LF south of the
Southeast corner of lot #62 of Branning Hills
Addition, Section I.

7 LATERAL #1-B:

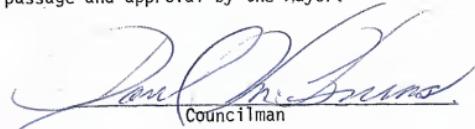
8 Beginning at a proposed manhole located 20+ LF
9 south of and 20+ LF west of the centerline in-
10 tersection of Linwood Drive and Melwood Court,
11 thence southerly 290+ LF terminating at a pro-
posed manhole located 1+ LF north of and 1+ LF
east of the Northeast corner of lot #78 of
Branning Hills Addition, Section I.

12 LATERAL #2-B:

13 Beginning at a proposed manhole located 20+ LF
14 south of and 20+ LF west of the centerline in-
15 tersection of Linden Drive and Melwood Court;
16 thence easterly generally following the south
right-of-way line of Linwood Drive 200+ LF ter-
minating at a proposed bulkhead located 1+ LF
west of and 5+ LF north of the Northeast corner
17 of lot #84 of Branning Hills Addition, Section I.,

18 of which the developer shall pay the entire cost and expense of the con-
19 struction of said sewer, all as more particularly set forth in said agree-
20 ment which is on file in the Office of the Board of Public Works and is
21 by reference incorporated herein, made a part hereof and is hereby in all
22 things ratified, confirmed and approved.

23 SECTION 2. That this Ordinance shall be in full force and effect
24 from and after its passage and approval by the Mayor.

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26 Councilman
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APPROVED AS TO FORM
AND LEGALITY,


CITY ATTORNEY

Read the first time in full and on motion by _____, seconded by _____.

Moses, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock M., E.S.T.

DATE: 6-13-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by _____, seconded by Disga, and duly adopted, placed on its passage.

PASSED (E.O.S.T) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>				
<u>BURNS</u>	<u>X</u>				
<u>HINGA</u>	<u>X</u>				
<u>HUNTER</u>	<u>X</u>				
<u>MOSES</u>	<u>X</u>				
<u>NUCKOLS</u>	<u>X</u>				
<u>SCHMIDT, D.</u>	<u>X</u>				
<u>SCHMIDT, V.</u>	<u>X</u>				
<u>STIER</u>	<u>X</u>				
<u>TALARICO</u>	<u>X</u>				

DATE: 6-27-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE

(RESOLUTION) No. 8-104-78 on the 27th day of June, 1978.
ATTEST: (SEAL) Charles W. Westerman Samuel J. Talarico

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of June, 1978, at the hour of 11:00 o'clock A.M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 29 day of June, 1978, at the hour of 8:30 o'clock M., E.S.T.

Robert Ellingshong
MAYOR

Bill No. S-78-06-22

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with Kenneth Niemeyer, Real Estate & Development, Inc., for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance 222 PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

6-27-78
CONCURRED IN
DATE 6-27-78 CHARLES W. WESTERMAN, CITY CLERK

66-35-21 H.I 9/31/78

AGREEMENT
FOR
SEWER EXTENSION

THIS AGREEMENT made in triplicate this 31 day of May, 1978 by
and between KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC. hereinafter referred
to as "Developer", and the CITY OF FORT WAYNE, IDNIANA, an Indiana Municipal
Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

SANITARY MAIN #1:

Beginning at an existing sanitary sewer manhole located $370\pm$ LF east of and $43\pm$ LF south of the intersection of Autumn View Drive and Tillman Road; thence southeasterly $295\pm$ LF to a proposed manhole; thence easterly $670\pm$ LF to a proposed manhole; thence southeasterly $300\pm$ LF to a proposed manhole located $20\pm$ LF east of and $20\pm$ LF south of the centerline intersection of Thrush Avenue and Linden Drive; thence southerly generally following the east right-of-way of said Thrush Drive $620\pm$ LF to a proposed manhole located $5\pm$ LF south of and $1\pm$ LF east of the southwest corner of Branning Hills Addition, Section I; thence generally following the south right-of-way line of Turnwood Drive $320\pm$ LF terminating at a proposed bulkhead located $5\pm$ LF north of and $1\pm$ LF east of the Northwest corner of lot #41 of said Branning Hills Addition, Section I.

LATERAL #1:

Beginning at a proposed manhole located $20\pm$ LF south of and $20\pm$ LF east of the centerline intersection of Thrush Drive and Linden Drive; thence easterly generally following the south right-of-way line of said Linden Drive $700\pm$ LF to a proposed manhole located $20\pm$ LF south of and $20\pm$ LF west of the centerline intersection of Linden Drive and Melwood Court; thence northerly generally following the west right-of-way line of said Melwood Court $330\pm$ LF to a proposed manhole; thence westerly generally following the south right-of-way of Leswood Court $450\pm$ LF terminating at a proposed cleanout located $4\pm$ LF north of and $2\pm$ LF east of the southeast corner of lot #13 of Branning Hills Addition, Section I.

LATERAL #1-A:

Beginning at a proposed manhole located $20\pm$ LF south of and $20\pm$ LF west of the centerline intersection of Linden Drive and Evanwood Court; thence southerly generally following the west right-of-way of said Evanwood Court $660\pm$ LF terminating at a proposed manhole located $5\pm$ LF east of and $1\pm$ LF south of the Southeast corner of lot #62 of Branning Hills Addition, Section I.

LATERAL #1-B:

Beginning at a proposed manhole located $20\pm$ LF south of and $20\pm$ LF west of the centerline intersection of Linwood Drive and Melwood Court; thence southerly $290\pm$ LF terminating at a proposed manhole located $1\pm$ LF north of and $1\pm$ LF east of the Northeast corner of lot #78 of Branning Hills Addition, Section I.

LATERAL #2-B:

Beginning at a proposed manhole located $20\pm$ LF south of and $20\pm$ LF west of the centerline intersection of Linden Drive and Melwood Court; thence easterly generally following the south right-of-way line of Linwood Drive $200\pm$ LF terminating at a proposed bulkhead located $1\pm$ LF west of and $5\pm$ LF north of the Northeast corner of lot #84 of Branning Hills Addition, Section I.

All sewers consist of $2525\pm$ LF of 8-inch sewer pipe and $2000\pm$ LF of 12 inch sewer pipe in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the office of the Shief W.P.C. Engineer of the City Utilities of the City, and known as Branning Hills, Section I Sanitary Sewers,

which plans, specifications and profiles are by reference incorporated herein and
made a part hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and
agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER:

The Developer shall cause said sewer to be constructed and located in accordance
with said plans, specifications, and profiles, all approved by the City, under
private contract to be let within ~~sixty~~ (60) days after requisite City approval.
All work and materials shall be subject to inspection by City and the right of
City to halt construction if there shall be noncompliance therewith. Said sewer
shall not be deemed permanently connected into the sewer system of City until
final acceptance by City. Upon completion, said sewer shall become the property
of City and City shall accept sewage therefrom, subject to such sewage service
charges as may now or hereafter be regularly established by City, and all
further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION:

The Developer agrees to pay the entire cost and expense of construction of said sewer,
in cash, including City inspection fees, and to hold the City harmless
from any liability for claims connected therewith.

3. AREA OF DEVELOPER:

Said sewer, when accepted by the City will serve the following described real
estate to be platted as Branning Hills, Section I.

A part of the North half of the Northeast quarter of Section 31, Township 30
North, Range 13 East, Allen County Indiana, more particularly described as
follows: Commencing at the Northeast corner of the Northeast quarter of Section 31, Township 30 North, Range 13 East; thence proceeding North 90 degrees
00 minutes 00 seconds West along the North line of the Northeast quarter of
the aforesaid Section, Township, and Range a distance of 270.000 feet; thence
leaving the North line of the Northeast quarter of the aforesaid Section,
Township, and Range South 01 degrees 14 minutes 18 seconds West to a point on
the South right-of-way line of Tillman Road said point being situated on the
Northwest corner of Lot #1, Cassel Hills Addition, Section I, a subdivision in
the aforesaid Section, Township, and Range, said point also being the point of
beginning; thence continuing South 01 degrees 14 minutes 18 seconds West along
the West boundary of Cassel Hills Addition, Section I, a subdivision in the
aforesaid Section, Township, and Range, a distance of 1288.06 feet to a point
on the Southwest corner of lot #61, Cassel Hills Addition, Section I; thence
South 89 degrees 51 minutes 40 seconds West along the South line of the North
half of the Northeast quarter of Section 31, Township 30 North, Range 13 East
a distance of 1074.69 feet; thence North 00 degrees 00 minutes 00 seconds East
a distance of 310.00 feet; thence North 39 degrees 51 minutes 40 seconds East
a distance of 80.00 feet; thence North 38 degrees 52 minutes 34 seconds East
a distance of 94.00 feet; thence North 00 degrees 00 minutes 00 seconds East
a distance of 114.98 feet; thence North 28 degrees 20 minutes 00 seconds West
a distance of 115.19 feet; thence North 46 degrees 51 minutes 51 seconds West
a distance of 120.08 feet; thence North 06 degrees 00 minutes 55 seconds East
a distance of 270.00 feet; thence North 90 degrees 00 minutes 00 seconds East
a distance of 185.00 feet; thence North 00 degrees 00 minutes 00 seconds East
a distance of 25.00 feet; thence North 90 degrees 00 minutes 00 seconds East
a distance of 130.00 feet; thence North 04 degrees 00 minutes 48 seconds West

to a point on the South right-of-way of Tillman Road a distance of 315.77 feet; thence North 90 Degrees 00 minutes 00 seconds East along the South right-of-way of Tillman Road a distance of 784.63 feet to the point of beginning containing 28.76 acres more or less.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connection into City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST DEVELOPER'S AREA:

An area connection charge of \$ 645.00 per acre must be paid to City before any construction commences. These charges are in addition to the local charge to install the sanitary sewer. These charges satisfy area connection and tap-in fee due the South Anthony Interceptor Res. 181 adopted April 4, 1968 and the Tillman Road Interceptor Res. 299-77, which was combined into Res. 65-277-16.

5. BOND:

This contract is subject to Developer furnishing a satisfactory Guaranty Bond for 25 per cent of the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

6. LIMITATION ON USE:

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION:

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described

in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns, transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE:

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17, and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17, I.C. 19-2-7-18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL:

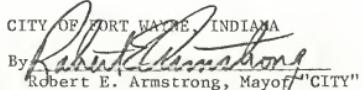
It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

REAL ESTATE & DEVELOPMENT, INC.

By 
Kenneth Niemeyer, President
Developer

Alene Niemeyer
Corporate Secretary
Real Estate & Development, Inc.

CITY OF FORT WAYNE, INDIANA
By 
Robert E. Armstrong, Mayor "CITY"

BOARD OF PUBLIC WORKS

By: Henry P. Wehrenberg
Henry P. Wehrenberg, Chairman

By: Ethel H. LaMar
Ethel H. LaMar, Member

By: Max G Scott

ATTEST:

Ursula Miller

Ursula Miller, Clerk

Approved as to form and legality:

Larry J. Burke

Larry J. Burke
Associate City Attorney

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kenneth Niemeyer, who acknowledged the execution of the foregoing agreement for sewer extension as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 21st day of April, 1978.

Lena M. Manganiello
Lena M. Manganiello, Notary Public
Resident of Allen County

My Commission Expires:

April 11, 1979

STATE OF INDIANA)
)
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert Armstrong, Mayor; Henry P. Wehrenberg, Chairman of the Board of Public Works; Ethel H. LaMar, and Max G. Scott, Members of the Board of Public Works; who acknowledged the execution of the foregoing agreement for sewer extension as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 31 day of May, 1978.

Anne J. Fox
ANNE J. FOX, Notary Public
Resident of Allen County

My Commission Expires:

3/6/80

This instrument prepared by: Philip R. Boller, Chief Water Pollution Control Engineer

TO: DON BODEKER

CC: R. Barnett

J. Leiter

P. Sullivan

Technical Services File TECHNICAL SERVICES

Project File

Work Request

CUSTOMER NAME KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC. T.S.NO. ASSIGNED

ADDRESS 10201 WAYNE TRACE

PROJECT: _____

DATE REQUESTED May 16, 1978 DATE NEEDED Contractor will notify 24 hrs. in advance.

TYPE (S) OF WORK TO BE PERFORMED

DRAFTING

CLERICAL

SURVEYING

BLUEPRINT

INSPECTION

OTHER _____

PROJECT DESCRIPTION (IF APPLICABLE) BRANNING HILLS, SECTION I SANITARY SEWER

DETAILED INSTRUCTIONS FOR SERVICES REQUIRED

REMARKS:

CUSTOMER TO BE CHARGED

Kenneth Niemeyer

W.O. #

AUTHORIZATION SIGNATURE

POSITION

DEPARTMENT HEAD APPROVAL

Bob Bell

Revised Nov. 1977

W.P.C. ENG. DEPT.
ROOM 700, CITY - COUNTY BLDG.
FT. WAYNE, IND. 46802

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - BRANNING HILLS ADD., SEC. IDEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS 8-78-06-22SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR BRANNING HILLS ADDITION, SECTION I,
INVOLVING AUTUMN VIEW DRIVE, TILLMAN ROAD, THRUSH DRIVE, LINDEN DRIVE, TURNWOOD DRIVE,
MELWOOD COURT, LESWOOD COURT, EVANWOOD COURT & LINWOOD DRIVE. DEVELOPER FOR THE PROJECT IS
KENNETH NIEMEYER, REAL ESTATE & DEVELOPMENT, INC., WHO WILL CONSTRUCT SEWER TO SERVE THE
ABOVE-DESCRIBED AREA.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF SEWER TO SERVE NEW AREA UNDER DEVELOPMENT, I.E.
BRANNING HILLS ADDITION, SECTION IEFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT SEWER TO SERVE AREA ABOVE-DESCRIBEDMONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND
EXPENSE OF CONSTRUCTION OF SAID SEWERASSIGNED TO COMMITTEE EP
Eug